

BEFORE THE THREE MEMBER DUE PROCESS PANEL  
PURSUANT TO RSMo. §162.961

PRE-STUDENT,	)	
	)	
Petitioner,	)	August 5, 2004
vs.	)	
	)	
PATTONVILLE R-III SCHOOL	)	
DISTRICT, PARKWAY C-2 SCHOOL	)	
DISTRICT and SPECIAL SCHOOL	)	
DISTRICT OF ST. LOUIS COUNTY,	)	
	)	
Respondents.	)	

**ORDER**

Respondents, Special School District of St. Louis County (“SSD”) and Pattonville R-III School District (“Pattonville”) have filed Motions to Dismiss. By Order issued July 2, 2004, Petitioner was granted until August 1, 2004 to file a response to said Motions. A response has not been received.

**Facts**

1. This request for due process hearing was instituted by the Father of Pre-Student, through his attorney, Ramon J. Morganstern by letter dated June 2, 2004. The “description of the nature of the problem” contained in the request for a due process hearing stated:

Failure to provide a free appropriate public education in a least restrictive environment by attempting to place him in an inappropriate educational facility as a disabled person.

Father believes Pre-Student’s best educational interests will be served by receiving FAPE through the Parkway School District starting this fall semester. Pursuant to this belief, Father requests that Pre-Student be placed in the Early Childhood Education Program of Respondent, Parkway School District where Father resides.

2. Pre-Student was born on November 6, 2001 and, accordingly, is less than three (3) years of age.

3. Father is the Respondent in a Family Court Judgment rendered on July 22, 2003, which designates Petitioner (Pre-Student's Mother) as the designated parent for mailing and educational purposes regarding Pre-Student and his older sister. Pre-Student's Mother's residence and mailing address is within the Pattonville School District. No Modification of Judgment, or other evidence, has been presented to suggest that the provision in the Family Court Judgment designating Pre-Student's Mother as the residential parent of Pre-Student, is not currently operative. Pre-Student's Mother is not a party to the request for a due process hearing.

4. Pattonville maintains an Early Childhood Program which includes special education for pre-kindergarten children. The program is housed in the Pattonville facility with Pattonville School District teachers and the Missouri Department of Elementary and Secondary Education has approved Pattonville's Early Childhood Special Education Grant.

### **Law**

#### **I. The hearing panel has authority to dismiss claims.**

Special education due process hearings are state proceedings, governed by the Missouri State Plan for Part B of the IDEA and the Missouri Administration Procedures Act ("APA"), RSMo. Chapter 536. *See also Independent Sch. Dist. No. 283 v. S.D.*, 88 F3d 556, 560 (8<sup>th</sup> Cir. 1996); *Z.A. v. San Bruno Park Sch. Dist.*, 165. F3d 1273, 1275 (9<sup>th</sup> Cir. 1999). The Missouri APA specifically provides that "[n]othing contained in sections 536.060 to 536.095 shall be construed (1) to impair the power of any agency to take lawful summary action in those matters where a contested case is not required by law." RSMo. §536.060. Thus, this hearing panel has the legal authority to summarily dismiss claims that are untimely or otherwise nonjusticiable.

**II. Pre-Student has not yet reached age three, and therefore does not fall within the purview of the Individuals With Disabilities Act (IDEA), Part B, or within the applicable Missouri statute.**

Under the Individuals With Disabilities Education Act (IDEA), states have a duty to provide Part B services to all children with disabilities starting at age three (3). 34 C.F.R. 300.121(c). The IDEA defines Pre-Students with disabilities as those children, ages 3 – 21, who have been properly evaluated as having an identified disability, and, who because of that disability, require special education and related services. Buttressing IDEA age eligibility standards is the Missouri statute which mandates that special education services begin for disabled children “three years of age or more . . .” §162.700 RSMo. The State of Missouri also defines a child with a disability to include children ages 3 through 5 who have been properly identified as a young child with a developmental delay (YCDD). Pre-Student does not turn three years old until November 6, 2004. Thus, SSD and Pattonville do not yet have a responsibility to provide a FAPE to Pre-Student. Further, neither SSD nor Pattonville have evaluated Pre-Student with respect to determining Pre-Student’s eligibility for services under IDEA. Therefore, SSD and Pattonville were not presented an opportunity to provide, nor could they have “failed to provide”, a FAPE to Pre-Student as the request for due process alleges.

**III. After Pre-Student reaches the age of three, the Pattonville School District will be the responsible educational institution for meeting Pre-Student’s educational needs.**

The St. Louis County Family Court Judgment entered on July 22, 2003 holds that the residence of the children of Pre-Student’s Mother and Pre-Student’s Father, for mailing and educational purposes, is Pre-Student’s Mother. Pre-Student’s Mother lives within the Pattonville School District. The Pattonville School District has been approved by the Missouri Department of Elementary and Secondary Education to conduct its own Early Childhood Special Education

Program separate and distinct from the SSD. Accordingly, preschool aged children with educational disabilities who reside within the Pattonville School District boundaries would attend the Pattonville Early Childhood Special Education Program.

**Conclusion/Order**

Because Pre-Student does not yet qualify for special educational services under IDEA and the Family Court ordered place of his residence is within the Pattonville School District, Respondent's motions to dismiss are sustained and the request for due process hearing is hereby dismissed.

Given by Order of :



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Richard H. Ulrich, Hearing Chair, on this  
5<sup>th</sup> day of August, 2004.  
8909 Ladue Road  
St. Louis, MO 63124  
(314) 991-4999  
(314) 991-2413 (Fax)

## **CERTIFICATE OF SERVICE**

I do hereby certify a copy of the foregoing was placed in the U.S. Mail, postage prepaid this 5<sup>th</sup> day of August, 2004 addressed to:

Mr. Dennis Hahn  
Mental Health Manager  
Poplar Bluff Regional Center  
Department of Mental Health  
Division of Mental Retardation and  
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Poplar Bluff, MO 63901  
*Panel Member*

Dr. Roberta Brennan  
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St. Charles R-VI School District  
1025 Country Club Drive  
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*Panel Member*

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*Parent*

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